

## Maine Revised Statutes

### Title 38: WATERS AND NAVIGATION

#### Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

##### **§569-A. GROUND WATER OIL CLEAN-UP FUND**

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/15)*

*(WHOLE SECTION TEXT REPEALED 12/31/15 by T. 38, §569-A, sub-§13)*

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The balance in the fund is limited to \$12,500,000. To this fund are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements, assessments and other fees and charges related to this subchapter. To this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd-party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1. The fund may be used only for the purposes specified in this subchapter and may not be diverted for any other use by the department, the Governor or the Legislature. Any person who proposes to enact or amend a law to allow use of the fund for a purpose not specified in this subchapter must submit the proposal to the Legislative Council and to the joint standing committee of the Legislature having jurisdiction over natural resource matters at least 30 days prior to any vote or public hearing on the proposal. An appropriation or allocation of the fund for use other than that specified in this subchapter is not authorized unless the required submittals have been made in a timely manner and the Legislature has approved the proposal by a 2/3 vote of each body. [1995, c. 399, §9 (AMD); 1995, c. 399, §21 (AFF).]

Borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund is not permitted after June 30, 1995. All funds borrowed prior to June 30, 1995 by the Ground Water Oil Clean-up Fund from the Maine Coastal and Inland Surface Oil Clean-up Fund must be repaid with interest to the fund of origin, in as prompt a manner as revenues allow and in no event more than 2 years after the date the funds were transferred, at a rate of interest determined by the Treasurer of State based on the average rate of interest earned on funds invested during the period of the loan. [1995, c. 399, §9 (AMD); 1995, c. 399, §21 (AFF).]

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund. [1991, c. 817, §26 (NEW).]

**1. Research and development.** The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil on ground waters of the State. These allocations must be made in accordance with section 570-A.

[1991, c. 817, §26 (NEW).]

**2. Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses directly or indirectly as a result of a discharge of oil from an underground oil storage facility or an aboveground oil storage facility, in this subsection called the "claimant," may apply to the commissioner within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details

for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims.

All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the claims proceeding as an interested party. A responsible party shall provide written notification of intent to join to the department within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, any determination of the amount of the claim and award is binding in any subsequent action for reimbursements to the fund. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the fund. [1991, c. 817, §26 (NEW).]

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party in a timely manner or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 4. [1991, c. 817, §26 (NEW).]

C. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties. [1991, c. 817, §26 (NEW).]

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim. [1991, c. 817, §26 (NEW).]

E. Damage claim awards paid from the fund to a claimant may not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or the responsible party's representative or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge. [1993, c. 553, §2 (AMD); 1993, c. 553, §7 (AFF).]

F. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative. [1991, c. 817, §26 (NEW).]

G. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant. [1991, c. 817, §26 (NEW).]

H. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for the expenses of treatment or replacement of the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548. [1993, c. 621, §4 (AMD).]

I. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party as defined under section 562-A, subsection 17. [2003, c. 551, §15 (AMD).]

J. Prior to forwarding a claim to the hearing examiner under subsection 4, the commissioner may require that the amount of the claim be finalized. [1991, c. 817, §26 (NEW).]

K. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim such as legal fees or real estate appraisal fees. [1991, c. 817, §26 (NEW).]

L. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph I. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2003, c. 551, §16 (NEW).]

[ 2009, c. 121, §14 (AMD) .]

**3. Claimant contact.** When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

[ 1991, c. 817, §26 (NEW) .]

**4. Determination of disputed 3rd-party damage claims.** The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant. [1991, c. 817, §26 (NEW).]

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner. [1991, c. 817, §26 (NEW).]

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination. [1991, c. 817, §26 (NEW).]

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A party seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination. Determinations made by the hearing examiner must be accorded a presumption of regularity and validity in a subsequent reimbursement action, but this presumption may be rebutted by responsible parties who do not become interested parties. [1993, c. 355, §18 (AMD).]

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State. [1991, c. 817, §26 (NEW).]

[ 1993, c. 355, §18 (AMD) .]

**5. Funding.** Funding for the Ground Water Oil Clean-up Fund is as follows.

A. A fee is assessed of 38¢ per barrel of gasoline; 19¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B who first transports oil into the State. The fee is not assessed on petroleum products that are exported from this State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I. [2003, c. 245, §12 (AMD).]

B. [1993, c. 553, §8 (AFF); 1993, c. 553, §4 (RP).]

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of \$130 per tank not constructed of fiberglass, cathodically protected steel or other noncorrosive material. [1993, c. 355, §19 (AMD).]

D. When the fund balance reaches \$12,500,000, the collection of fees under paragraph A abates. When the commissioner projects that the fund balance will reach \$12,500,000, the commissioner must provide a 15-day advance notice of the abatement to persons assessed the fee under paragraph A. The \$12,500,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. When the fund balance is reduced to \$10,000,000, the fees assessed under paragraph A are reimposed. The commissioner shall provide a 15-day advance notice of the reimposition of those fees. [1995, c. 399, §10 (AMD); 1995, c. 399, §21 (AFF).]

E. If the fund balance is reduced to \$5,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under paragraph A by up to 20¢ per barrel for gasoline and up to 10¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 if necessary to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to this paragraph terminates and the fees imposed under paragraph A apply when the fund balance reaches \$7,000,000. [2001, c. 216, §3 (AMD).]

[ 2003, c. 245, §12 (AMD) .]

**5-A. Penalty for late payment of fees.** Fees assessed under subsection 5, paragraph A are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in Maine. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 5. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

[ 2001, c. 212, §3 (AMD) .]

**6. Allocation from Ground Water Oil Clean-up Fund.**

[ 1999, c. 505, Pt. A, §13 (RP) .]

**7. Reimbursement for fees imposed on transfers out of State.** Any person who paid a fee under subsection 5, paragraph A on petroleum products that were exported from this State must be reimbursed by the department upon presentation of documentation of that payment and transfer.

[ 1997, c. 624, §4 (AMD) . ]

**8. Disbursements from fund.** Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personal services and equipment costs of the department related to the administration and enforcement of this subchapter, except that total disbursements for personal services may not exceed \$4,500,000 per fiscal year adjusted annually based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics; [ 2013, c. 300, §12 (AMD) . ]

A-1. Repayment of loans made to the Ground Water Oil Clean-up Fund from the Maine Coastal and Inland Surface Oil Clean-up Fund; [ 1997, c. 364, §33 (NEW) . ]

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil from an oil storage facility not paid by a responsible party or an applicant for coverage by the fund; [ 2009, c. 501, §10 (AMD) . ]

C. Sums allocated to research and development in accordance with this section, except that money may not be disbursed for this purpose when the fund balance is \$3,000,000 or less; [ 1995, c. 399, §14 (AMD); 1995, c. 399, §21 (AFF) . ]

D. Payment of the 3rd-party damage claims awarded in accordance with this section that are not paid by the responsible party or applicant for coverage by the fund and payment of 3rd-party damage claims that are paid to owners or operators pursuant to section 568-A, subsection 6; [ 1993, c. 553, §6 (AMD); 1993, c. 553, §7 (AFF) . ]

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims; [ 1991, c. 817, §26 (NEW) . ]

F. [ 1993, c. 355, §21 (RP) . ]

G. Payment of costs of insurance by the State to extend or implement the benefits of the fund; [ 1991, c. 817, §26 (NEW) . ]

H. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner; [ 1991, c. 817, §26 (NEW) . ]

I. All costs associated with the Board of Underground Oil Storage Tank Installers; [ 1993, c. 363, §13 (AMD); 1993, c. 363, §21 (AFF) . ]

J. Payments to or on behalf of applicants eligible for coverage by the fund under section 568-A, subsection 1 for expenses above the deductible specified in section 568-A, subsection 2 incurred in commissioner-approved clean-up activities and specified in an agreement under section 568-A, subsection 4; [ 1993, c. 363, §13 (AMD); 1993, c. 363, §21 (AFF) . ]

K. All costs associated with the Fund Insurance Review Board; [ 1997, c. 613, §2 (AMD) . ]

L. Costs incurred by the Office of the State Fire Marshal to implement the duties assigned to the State Fire Marshal in this chapter; [ 1997, c. 613, §2 (AMD) . ]

M. Sums up to \$250,000 annually in fiscal years 1998-99 and 1999-2000 and up to \$500,000 annually thereafter, to retrofit, repair or replace aboveground oil storage tanks or facilities when the commissioner determines that action necessary to abate an imminent threat to a groundwater restoration project,

a public water supply or a sensitive geologic area, including coastal islands and peninsulas. Money available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by municipalities in assisting the department in taking actions under this paragraph. Money available under this paragraph may also be used by the department to fund educational efforts that encourage the retrofit, repair or replacement of aboveground oil storage tanks or facilities. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Fund Insurance Review Board. Money may not be disbursed from the fund under this paragraph:

- (1) After fiscal year 1999-2000 until the department has adopted a written policy establishing:
  - (a) Criteria for determining those instances when funds should be disbursed under this paragraph, including criteria for determining what constitutes a sensitive geologic area;
  - (b) Guidelines that ensure that money disbursed from the fund under this paragraph will be used in the most cost-effective manner, considering the likelihood of actual contamination of water supplies absent action taken pursuant to this paragraph, the costs of remediation of such contamination and the possibility that the owner of an aboveground oil storage tank or facility would retrofit, repair or replace the tank at the owner's own expense; and
  - (c) Guidelines for payments to municipalities for reasonable administrative costs actually incurred by municipalities in assisting the department in taking actions under this paragraph; and
- (2) After February 2, 2003 until the department has adopted a written policy that:
  - (a) Establishes a means test for eligibility for disbursements from the fund;
  - (b) Establishes a deductible that is adjusted according to the financial means of the person receiving a disbursement; and
  - (c) Limits eligibility to residents of this State.

Prior to adopting any written policy pursuant to subparagraph (1) or (2), the department shall present for comment a draft policy to the Fund Insurance Review Board. The Fund Insurance Review Board shall provide to the department written comments on the draft policy; and [1999, c. 635, §1 (AMD) .]

N. Sums up to \$1,250,000 annually during the 2-year period commencing July 1, 1998 and ending June 30, 2000 and up to \$2,000,000 annually thereafter to distribute to community action agencies as defined in Title 22, section 5321 for loans and grants to retrofit, repair or replace aboveground and underground oil storage tanks and associated piping at single-family residences. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Fund Insurance Review Board. A community action agency shall administer the funds in accordance with program operating standards, including the allocation formula established by the Maine State Housing Authority for its weatherization program. Sums available under this paragraph may be disbursed by the department to pay reasonable costs actually incurred by a community action agency in providing services pursuant to this paragraph. Money may not be disbursed from the fund under this paragraph after June 30, 2000 until the department has adopted a written policy establishing guidelines for payments to community action agencies for reasonable administrative costs actually incurred by community action agencies in providing services pursuant to this paragraph. Prior to adopting any written policy pursuant to this paragraph, the department shall present for comment a draft policy to the Fund Insurance Review Board. The Fund Insurance Review Board shall provide to the department written comments on the draft policy. [1999, c. 635, §2 (AMD) .]

[ 2013, c. 300, §12 (AMD) .]

**9. Reporting mechanism.** If the potential liabilities of the fund exceed projected income for the fund, the commissioner shall notify the Fund Insurance Review Board within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

[ 1995, c. 399, §15 (AMD); 1995, c. 399, §21 (AFF) . ]

**10. Reimbursements to fund.** The commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph J for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1 and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 8, paragraphs B, D, E, H and J or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. If a request for reimbursement to the fund is not paid within 30 days of demand, the commissioner shall refer the request to the Attorney General or to a collection agency, agent or attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191 for collection.

[ 1991, c. 817, §26 (NEW) . ]

**10-A. Lien.** All costs incurred by the State in the removal, abatement and remediation of a prohibited discharge of oil from an oil storage facility and all costs incurred by the State in the abandonment of an underground oil storage facility or tank under section 566-A, subsection 4 and interest are a lien against the real estate of the responsible party. For a responsible party determined eligible for coverage under section 568-A, subsection 1, the lien is for the amount of any unpaid deductible assigned under section 568-A, subsection 2 and any eligible clean-up costs and 3rd-party damage claims above \$1,000,000.

A certificate of lien signed by the commissioner must be sent by certified mail to the responsible party prior to being recorded and may be filed in the office of the clerk of the municipality in which the real estate is located. The lien is effective when the certificate is recorded with the registry of deeds for the county in which the real estate is located. The certificate of lien must include a description of the real estate, the amount of the lien and the name of the owner as grantor.

When the amount for which a lien has been recorded under this subsection has been paid or reduced, the commissioner, upon request by any person of record holding interest in the real estate that is the subject of the lien, shall issue a certificate discharging or partially discharging the lien. The certificate must be recorded in the registry in which the lien was recorded. Any action of foreclosure of the lien must be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the real estate subject to the lien is located.

[ 2009, c. 501, §11 (AMD) . ]

**11. Waiver of reimbursement.** Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of either of the following:

A. An act of war; or [1991, c. 817, §26 (NEW) . ]

B. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency. [1991, c. 817, §26 (NEW) . ]

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

[ 1991, c. 817, §26 (NEW) . ]

**12. Extinguishing the 3rd-party commercial risk pool account.**

[ 1993, c. 355, §22 (RP) .]

**13. Repeal date.** This section is repealed December 31, 2015.

[ 2009, c. 319, §14 (AMD) .]

## SECTION HISTORY

1991, c. 817, §26 (NEW). 1993, c. 355, §§16-22 (AMD). 1993, c. 363, §§13,14 (AMD). 1993, c. 363, §21 (AFF). 1993, c. 410, §H1 (AMD). 1993, c. 412, §§5,6 (AMD). 1993, c. 553, §§2-6 (AMD). 1993, c. 553, §§7,8 (AFF). 1993, c. 621, §4 (AMD). 1993, c. 680, §A36 (AMD). 1995, c. 399, §§9-15 (AMD). 1995, c. 399, §21 (AFF). 1997, c. 364, §§32-34 (AMD). 1997, c. 374, §§6,7 (AMD). 1997, c. 613, §§2,3 (AMD). 1997, c. 624, §4 (AMD). 1999, c. 278, §§2,3 (AMD). 1999, c. 334, §§3,4 (AMD). 1999, c. 505, §§A12,13 (AMD). 1999, c. 635, §§1,2 (AMD). 2001, c. 212, §3 (AMD). 2001, c. 216, §3 (AMD). 2001, c. 605, §1 (AMD). 2003, c. 245, §§12,13 (AMD). 2003, c. 551, §§15,16 (AMD). 2005, c. 157, §1 (AMD). 2005, c. 330, §23 (AMD). 2009, c. 121, §14 (AMD). 2009, c. 319, §14 (AMD). 2009, c. 501, §§10, 11 (AMD). 2013, c. 300, §12 (AMD).

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